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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120208116-2416-03]

RIN 0648-BB83

Fisheries of the Northeastern United States; 2012-2013 Northeast Skate Complex Fishery Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This rule implements catch limits and associated measures for the Northeast skate complex fishery for the 2012-2013 fishing years. The action was developed by the New England Fishery Management Council pursuant to the provisions of the Northeast Skate Complex Fishery Management Plan. The catch limits are supported by the best available scientific information and reflect recent increases in skate biomass.

DATES: This rule is effective May 1, 2012.

ADDRESSES: An environmental assessment (EA) was prepared that describes the action and other considered alternatives, and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of the EA and the Initial Regulatory Flexibility Analysis (IRFA), are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at <http://www.nefmc.org>.

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Policy Analyst, (978) 281-9273; fax: (978) 281-9135.

SUPPLEMENTARY INFORMATION:

Background

The New England Fishery Management Council (Council) is responsible for developing management measures for skate fisheries in the northeastern U.S. through the Northeast Skate Complex Fishery Management Plan (Skate FMP). Seven skate species are managed under the Skate FMP: Winter, little, thorny, barndoor, smooth, clearnose, and rosette. The Council's Scientific and Statistical Committee reviews the best available information on the status of skate populations and makes recommendations on acceptable biological catch (ABC) for the skate complex (all seven species). This recommendation is then used as the basis for catch limits and other management measures for the skate fisheries.

A detailed description of how the 2012-2013 skate ABC and associated specification measures were derived is provided in the proposed rule for this action (February 22, 2012, 77 FR 10463), and in its supplementary materials (see ADDRESSES). The final approved specifications for the 2012-2013 skate fishery are described below, and are mostly consistent with the measures implemented by Secretarial emergency action during the 2011 fishing year (October 28, 2011, 76 FR 66856), except as noted.

Final Measures

NMFS is implementing the following specifications for the skate fishery for the 2012-2013 fishing years:

1. Skate ABC and annual catch limit (ACL) of 50,435 mt;
2. Annual catch target (ACT) of 37,826 mt;

3. Total allowable landings (TAL) of 21,561 mt (the skate wing fishery is allocated 66.5 percent of the TAL (14,338 mt) and the skate bait fishery is allocated 33.5 percent of the TAL (7,223 mt, divided into three seasons according to the regulations at § 648.322));
4. The skate bait possession limit is increased from 20,000 lb (9,072 kg) to 25,000 lb (11,340 kg) whole weight per trip for vessels carrying a valid Skate Bait Letter of Authorization; and,
5. The skate wing possession limits will remain at status quo levels, as defined in § 648.322(b): 2,600 lb (1,179 kg) wing weight per trip for Season I (May 1 through August 31), and 4,100 lb (1,860 kg) wing weight per trip for Season II (September 1 through April 30) for vessels fishing on a Northeast Multispecies, Monkfish, or Scallop Day-at-Sea. The Northeast Multispecies Category-B Day-at-Sea possession limit remains at 220 lb (100 kg) wing weight per trip, and the non-Day-at-Sea incidental possession limit remains at 500 lb (227 kg) wing weight per trip.

The proposed rule included reductions to the skate wing possession limits, as recommended by the Council, in an effort to prolong the fishing season and avoid implementation of the incidental skate wing possession limit before the end of the fishing year (i.e., closure of the directed skate wing fishery). The possession limit analysis used by the Council was based on skate landing rates in 2010 and early 2011 when landing rates were particularly high. However, landing rates slowed during 2011, and as of March 31, 2012, the wing fishery only landed 77 percent of its TAL, and is not projected to land its entire TAL before the end of the fishing year. Upon the reasonable assumption that landing rates in 2012 and 2013 will be similar to this year's, implementing the reduced possession limits recommended by the Council may prevent the TAL from being harvested. Therefore, there is no justification to

reduce the skate wing possession limits for the 2012-2013 fishing years, and the proposed reduction is disapproved. The skate wing possession limits will remain at status quo levels.

For the reasons described in the proposed rule and environmental assessment for this action (see ADDRESSES), this final rule implements updates to stock status determination criteria for skates that reflect the most recent scientific information. These updates include refinement of the survey strata used for determining the stock status of each skate species, and adjusts the overfishing definition for clearnose skate. Overfishing would be deemed to be occurring if the 3-year moving average trawl survey biomass of clearnose skate declines by 40 percent or more.

Additionally, this final rule implements the requirement that skate bait transfers at sea, as recorded on vessel trip reports, be counted against the skate bait fishery quotas. Recent analysis indicated that bait transfers at sea, on average, represented approximately 18 percent of total skate landings, and need to be considered when monitoring catch.

Finally, in order to be consistent with the requirements of Amendment 3, this final rule removes a reference to Northeast multispecies sectors in the skate wing possession limit regulations found at § 648.322(b). The skate wing possession limits were not intended to apply to sector vessels, and this reference should have been removed from the Amendment 3 final rule (June 16, 2010, 75 FR 34049).

Comments and Responses

On February 22, 2012, NMFS published a proposed rule soliciting public comment on the proposed skate fishery specifications, and accepted comments through March 23, 2012. NMFS received seven comments on the proposed rule. This section summarizes the principal comments contained in the comment letters, and NMFS's response to those comments.

Comment 1: Four commercial fishing groups and the Massachusetts Division of Marine Fisheries were supportive of the proposed TALs, but were opposed to reducing the skate wing possession limits.

Response: NMFS agrees that the TALs reflect the best available science and are consistent with the requirements of the Skate FMP. NMFS also agrees that the skate wing possession limits do not need to be reduced as more fully discussed above in the preamble. Therefore, this final rule maintains the status quo possession limits for the skate wing fishery through the 2013 fishing year.

Comment 2: Three of the commercial fishing groups commented that the prohibition on possession of barndoor skate should be removed, and an incidental possession limit of barndoor skate wings should be implemented.

Response: The issue of barndoor skate possession is beyond the scope of these specifications, and was not part of the proposed rule. Therefore, this issue cannot be added to this final rule. To date, the Council has rejected measures to allow possession of this species, which is no longer overfished, but not yet rebuilt to its target population size. The Council may reconsider species prohibitions in future actions.

Comment 3: One commenter was generally critical of NMFS and opposed to the proposed catch limits. The commenter suggested that skate stock status was inaccurate, and skate quotas should be reduced by 50 percent.

Response: No justification was offered by the commenter to indicate that the proposed specifications were based on inaccurate science. Justification for reducing the skate quotas by 50 percent was also not provided. These specifications are based upon the best available scientific information, as required by the Magnuson-Stevens Act. Skate stock status determinations were

developed following stock assessments conducted by the Northeast Fisheries Science Center and rigorously peer-reviewed by external fishery scientists. The skate ABC was recommended by the Council's Scientific and Statistical Committee, and was based upon precautionary catch levels designed to promote biomass increases in all skates. Therefore, the commenter's assertions are unfounded, and NMFS disagrees that quotas should be reduced.

Comment 4: One commenter was opposed to the proposed catch limits due to concerns of the impacts on thorny skate, a prohibited species that is currently overfished. The commenter argued that these specifications would promote illegal landings of thorny skate, increase discards, and ultimately hinder the rebuilding of this stock. The commenter was particularly critical of NMFS's lack of documented enforcement actions against vessels that may have illegally landed thorny skates. The commenter argued that vessels should be required to report all skate landings by species, skates should only be landed in whole form to improve dockside species identification and enforcement, and additional measures should be implemented to help rebuild thorny skates (e.g., time/area closures in essential thorny skate habitats).

Response: In response to similar comments received on the 2011 emergency action (October 28, 2011, 76 FR 66856), NMFS disagrees that these specifications would have significant negative impacts on thorny skates. NMFS acknowledges the overfished condition and vulnerability of thorny skates, but the skate ABC recommended by the Council was specified at a level that should help promote long-term biomass increases in this stock (which needs to be rebuilt by 2028). Fishing effort in the skate fishery is not greatly affected by skate catch limits, as the vast majority of vessels that land skates catch them incidentally to trips targeting groundfish or monkfish. Effort in these fisheries has declined in recent years, and may decline further in coming years. Discards of all skates have declined in recent years. Therefore,

increasing skate catch limits is not expected to promote more fishing effort for, or discards of, thorny skates.

The lack of documented enforcement actions citing illegal possession of thorny skates is not reflective of a total lack of enforcement of this prohibition. As described in NMFS's negative 90-day finding on a petition to list thorny skate as endangered under the Endangered Species Act (December 20, 2011, 76 FR 78891), between 2007 and 2010, thorny skate wings were found in less than 1 percent of sampled skate wing landings. Therefore, there is no basis for concluding that enforcement of this provision is inadequate, and NMFS has ongoing education and outreach efforts in the skate fishery to improve prohibited species compliance (e.g., <http://www.nero.noaa.gov/sfd/sfdskate.html>). If prohibited species regulations were not being adequately enforced, port sampling would reveal more frequent landings of thorny skate wings. NMFS agrees that landing skates in whole form would improve monitoring of species-specific landings, and help further enforce species prohibitions. However, the Council has rejected such requirements for the skate fishery to date. In addition to closed areas and other measures, the Council may reconsider such measures to help rebuild thorny skate in future actions.

Changes from the Proposed Rule

In § 648.322(b)(1), the proposed change to the skate wing possession limits are not included in this final rule due to the disapproval of this proposed measure.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a determination that this rule is consistent with the Skate FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

The Office of Management and Budget has determined that this rule is not significant for the purposes of Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement for a 30-day delay in effectiveness under the provisions of section 553(d) of the Administrative Procedure Act. This action would result in a benefit of additional revenues associated with a skate bait possession limit that is 25 percent higher, and provides more opportunity for skate bait vessels to harvest their full allocation of quota. This rule increases the possession limit for skate bait and, consequently, extends fishing opportunity for fishermen that would otherwise be constrained under the current possession limits, which are unnecessarily restrictive. If this rulemaking was delayed to allow for a 30-day delay in effectiveness, the fishery would likely forego some amount of landings and revenues during the delay period. While these restrictions would be alleviated after this rule becomes effective, fishermen may be not able to recoup the lost economic opportunity of foregone landings of skate bait that would result from a delay in the effectiveness of this action. For these reasons, the AA finds good cause to waive the 30-day delay and to implement this rule on May 1, 2012.

Pursuant to section 604 of the Regulatory Flexibility Act (RFA), NMFS has prepared a Final Regulatory Flexibility Analysis (FRFA) in support of this action. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, relevant analyses contained in the action and its EA, and a summary of the analyses completed to support the action in this rule. A copy of the analyses done in the action and EA are available from the Council (see ADDRESSES). A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this

rule is contained in the preamble to the proposed rule and this final rule and is not repeated here.

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

Seven comments were received on the proposed rule. For a summary of the comments, and NMFS's responses to them, see the Comments and Responses section above. None of the comments raised issues or concerns related to the IRFA, and no changes were made to the rule as a result of the comments.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

These final specifications will impact vessels that hold Federal open access commercial skate permits that participate in the skate fishery. According to the Framework 1 final rule and its Final Regulatory Flexibility Analysis (76 FR 28328, May 17, 2011), as of December 31, 2010, the maximum number of small fishing entities (as defined by the SBA) that may be affected by this action is 2,607 entities (number of skate permit holders). However, during fishing year 2010, only 601 vessels landed any amount of skate.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This rule does not duplicate, overlap, or conflict with other Federal rules.

Description of the Steps the Agency Has Taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statutes

The purpose of this action is to specify catch limits and other management measures that reflect the best available scientific information and the requirements of the Skate FMP. The Council considered one ACL alternative (no action) to the preferred alternative being

implemented. The preferred ACL and TALs are expected to extend the duration of the fishing season relative to the no action alternative, and help to prevent the negative economic impacts that would be associated with an early closure of the directed skate fisheries. Under the no action alternative, the skate catch limit would remain at 41,080 mt. This alternative was not selected because it does not represent the best available scientific information, and would likely result in negative economic impacts as compared to the preferred alternative. Compared to the other alternative considered, this action is expected to better maximize profitability for the skate fishery by allowing higher levels of landings for the duration of the 2012 and 2013 fishing years while still being consistent with requirements of the Magnuson-Stevens Act and other applicable law. Therefore, the economic impacts resulting from this action as compared to the no action alternative are positive, since the action would provide additional fishing opportunity for vessels participating in the skate fishery for the 2012-2013 fishing years.

The action is almost certain to result in greater revenue from skate landings. Based on recent landing information, the skate fishery is able to land close to the full amount of skates allowable under the quotas. The estimated potential revenue from the sale of skates under the revised catch limits is approximately \$9.0 million, compared to \$5.8 million if this action were not implemented. Due to the implications of closing the directed skate fisheries early in the fishing year, the higher catch limits associated with this action will result in additional revenue if fishing is prolonged. According to analyses in Framework 1, vessels that participate in the skate fishery derive most (an average of 96 percent) of their revenues from other fisheries (e.g., groundfish, monkfish). Therefore, relative to total fishing revenues, catch limits of other species would be expected to have more significant economic impacts than revenues derived from skates

alone. However, as skate prices have begun increasing in recent years, more vessels are deriving a greater proportion of their income from skates.

The final possession limits in the skate wing and bait fisheries are also expected to result in positive economic impacts compared to the other alternatives considered. The reduced skate wing possession limits described in the proposed rule would have slightly reduced trip level revenues of skates. Maintaining the status quo skate wing possession limits, as implemented in this final rule, will help maintain consistent trip level revenues for skate wings, as well as allow the fishery to operate throughout the fishing year without closures. The increased skate bait possession limit implemented by this final rule is also expected to increase trip level revenue for bait skates, and may help the bait fishery land more of its allocated TAL in 2012 and 2013.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of permits for the skate fishery. The guide and this final rule will be available upon request, and posted on the Northeast Regional Office’s website at www.nero.noaa.gov.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: April 24, 2012.

Alan D. Risenhoover, Acting Deputy Assistant Administrator
for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 648.322, revise paragraph (b) introductory text and paragraph (c)(4) to read as follows:

§ 648.322 Skate allocation, possession, and landing provisions.

* * * * *

(b) Skate wing possession and landing limits. A vessel or operator of a vessel that has been issued a valid Federal skate permit under this part, and fishes under an Atlantic sea scallop, NE multispecies, or monkfish DAS as specified at §§648.53, 648.82, and 648.92, respectively, unless otherwise exempted under §648.80 or paragraph (c) of this section, may fish for, possess, and/or land up to the allowable trip limits specified as follows:

* * * * *

(c) * * *

(4) The vessel owner or operator possesses or lands no more than 25,000 lb (11,340 kg) of only whole skates less than 23 inches (58.42 cm) total length, and does not possess or land any skate wings or whole skates greater than 23 inches (58.42 cm) total length.

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